



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Matthew J. Strickler
Secretary of Natural Resources

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO THE TOWN OF VICTORIA FOR VICTORIA EAST SEWAGE TREATMENT PLANT VPDES Permit No. VA0020184

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Town of Victoria, regarding the Victoria East Sewage Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "BRRO-L" means the Blue Ridge Regional Office of DEQ, which was located in Lynchburg, Virginia.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "DMR" means Discharge Monitoring Report.
9. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. "Facility" or "Plant" means the Victoria East Sewage Treatment Plant located at 1915 5th St, Victoria, Virginia, which treats and discharges treated sewage for the residents and businesses of the Town of Victoria.
11. "Town" or "Victoria" means the Town of Victoria, a political subdivision of the Commonwealth of Virginia. The Town is a "person" within the meaning of Va. Code § 62.1-44.3.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Permit" means VPDES Permit No. VA0020184 which was issued under the State Water Control Law and the Regulation to the Town on July 15, 2013 and which expires on July 14, 2018.
15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand,

cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9
VAC 25-31-10.

16. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
17. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
18. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. The Town owns and operates the Plant. The Permit allows the Town to discharge treated sewage from the Plant to an unnamed tributary (UT) of Big Hounds Creek, in strict compliance with the terms and conditions of the Permit.
2. The UT of Big Hounds Creek is located in the Chowan and Dismal Swamp River Basin. During the 2016 Water Quality Assessment 305(b)/303(d) Integrated Report, the tributary was not assessed for any designated uses; therefore, the stream is considered a Category 3A waterbody. The Plant was addressed in the Non-Tidal Chowan River Watershed Bacterial TMDL, which was approved by EPA on October 14, 2005 and by

the State Water Control Board on September 27, 2006. The Plant received an E.coli wasteload allocation of 6.96+11 cfu/year.

3. The copper limit in the Town's Permit was reassessed when the Permit was re-issued in 2013. The previous permit contained a copper limit of 9.1 ug/l, which was effective until the completion of a schedule of compliance contained in the Permit. After completion of the schedule of compliance, the copper limit dropped to the final limit of 5.7 ug/l. The Town sent a letter to DEQ on March 9, 2015, stating that it had achieved compliance with the final limit. Therefore, beginning with the January through June 2016 semi-annual reporting period the Town had to comply with the Permit's final limit of 5.7 ug/l for copper.
4. In submitting its DMRs, as required by the Permit, the Town has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for copper, for the months of April 2016-April 2018. In addition, the average concentration limit for E. coli was exceeded in May 2017, June 2017, August 2017 and September 2017. The quantity maximum limit and concentration maximum limit for total kjeldahl nitrogen was exceeded in May 2017. The ammonia as N average and maximum concentration limits were exceeded in January 2018.
5. DEQ BRRO issued Warning Letter No.W2016-06-L-1003 on June 15, 2016 and WL No.W2016-07-L-1004 on July 6, 2016 to the Town for the April 2016 and May 2016 copper exceedances.
6. The Town responded to the Warning Letters and said it was increasing the amount of magnesium-hydroxide to the influent to meet the copper effluent limits. However, the Town has been unable to get the effluent within the copper limits.
7. On October 6, 2016, the Town entered into an agreement with a consultant to conduct a copper water effects ratio (WER) study. In November 2016, DEQ informed the Town that a WER could no longer be conducted for copper. DEQ suggested the Town conduct a study using the Biotic Ligand Model (BLM). The Town's consultant asked DEQ for further guidance so the consultant could put together a study plan.
8. DEQ BRRO-L issued NOV No. W2016-10-L-0001 on October 12, 2016 and DEQ PRO issued NOV No. W2018-03-P-0002 on March 20, 2018 for the violations listed above. The BRRO-L office closed effective May 1, 2017 and the boundaries of the Piedmont Regional Office and Blue Ridge Regional Office in Roanoke were adjusted. The Town of Victoria is now within the boundaries of DEQ's Piedmont Regional Office.
9. On the August 2017 DMR, the Town explained that it switched UV modules and on the September 2017 DMR the Town said it rebuilt the UV module to try to correct the E.coli issue. The Plant returned to compliance with the E.coli Permit limits in October 2017 and has remained within the limits. The Ammonia as N was within Permit limits in February 2018 and has remained within the limits. The Plant continues to violate the Permit limits for copper.

10. On August 22, 2017 Department staff met with representatives of the Town to discuss the copper violations. During the meeting, the Town told DEQ it was still interested in conducting a BLM or WER study for copper.
11. Following the August 2017 meeting, the Town continued to wait for DEQ to clarify whether a WER or BLM study would be accepted by both DEQ and EPA.
12. On April 25, 2018, the Town's consultant submitted draft proposals for WER and BLM studies.
13. On May 3, 2018, DEQ staff discussed the study proposals and NOV's with the Town's consultant and representatives of the Town. Following the meeting, the Town stated it would like to pursue a BLM study to amend the copper limits in the Permit.
14. The Town's operating logs indicate that it discharged treated wastewater from the Plant every day from April 1, 2016 to April 30, 2018.
15. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
16. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
17. Part I.A. of the Permit provides that the Town shall limit and monitor discharges from the outfalls in accordance with the discharge limitations in the Permit.
18. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
19. The Department has issued no permits or certificates to the Town other than VPDES Permit No. VA0020184.
20. The UT of Big Hounds Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
21. Based on the DMR submittals for the April 2016 through January 2018 DMRs, the Board concludes that the Town has violated Permit Part I.A.1, Va. Code 62.1-44.5, and 9 VAC 25-31-50 by discharging treated sewage from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(4), above.
22. In order for the Town to complete its return to compliance, DEQ staff and representatives of the Town have agreed to the Schedule of Compliance, which is incorporated as Appendices A and B of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Town, and the Town agrees to:

1. Perform the actions described in Appendices A and B of this Order; and
2. Pay a civil charge of \$9,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The Town shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, the Town shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Town for good cause shown by the Town, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2016-10-L-0001 dated October 12, 2016; NOV No. W2018-03-P-0002 dated March 20, 2018; Warning Letter No. W2016-06-L-1003 dated June 15, 2016 and WL No. W2016-07-L-1004 dated July 6, 2016. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the Town admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The Town consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. The Town declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the Town to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Town shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Town shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Town shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and the Town. Nevertheless, the Town agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after the Town has completed all of the requirements of the Order;
 - b. The Town petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Town.

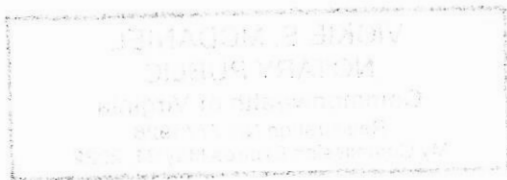
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Town from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the Town and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of the Town certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the Town to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Town.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the Town voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2018.

Jefferson Reynolds, Enforcement Director
Department of Environmental Quality

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The Town of Victoria voluntarily agrees to the issuance of this Order.

Date: 6/25/2018 By: Rodney Clark, Town Manager
(Person) (Title)
Town of Victoria

Commonwealth of Virginia
City/County of huntsburg

The foregoing document was signed and acknowledged before me this 25 day of
June, 2018, by Vickie S. McDaniel who is
Clerk of the Town of Victoria on behalf of the Town.

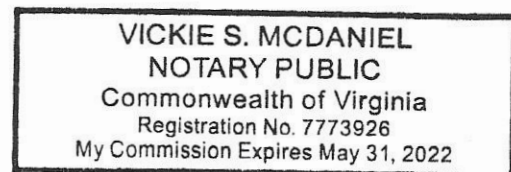
Vickie S. McDaniel
Notary Public

7773926

Registration No.

My commission expires: 5/31/2022

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

The Town of Victoria shall:

1. On or before July 15, 2018 submit to the Department for review and approval a Biotic Ligand Model (BLM) study plan and implementation schedule for discharges of copper at the Plant. The study plan shall be drafted in accordance with 9VAC25-260-140.G.
2. Upon Department approval, implement the BLM study in accordance with the approved schedule. Any changes to the approved schedule require prior notice and approval by the Department.
3. Within 30 days of completion of the BLM study, submit to the Department the results of the study and a request for a modification to the Permit copper limits.

DEQ Contact

Unless otherwise specified in this Order, the Town shall submit all requirements of Appendix A of this Order to:

Kristen Sadtler
Water Enforcement Manager
VA DEQ – Central Office
P.O. Box 1105
Richmond, VA 23218
804-698-4149
Kristen.sadtler@deq.virginia.gov

APPENDIX B
INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

From the effective date of this Order until completion of the corrective action requirements contained in Appendix A and the issuance of a modified Permit, but in no event later than June 15, 2020, the Town shall monitor and limit the discharge from Outfall No. 001 of the Plant in accordance with VPDES Permit Number VA0020184 except as specified below. These interim limits shall retroactively apply, if applicable, as of the first day of the month in which this Order becomes effective.

These requirements shall be construed in light of the Regulation.

Parameter Description	Parameter Limits				Monitoring Requirements	
	Monthly Average	Weekly Average	Minimum	Maximum	Sample Frequency	Sample Type
Total Recoverable Copper	11ug/l	11ug/l	NA	NA	1/Month	8-HC